

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STANCY NESBY,
Plaintiff,
v.

No. C 05-3555 JL

**PARTIAL SUMMARY JUDGMENT
(granting Docket # 54)**

THE CITY OF OAKLAND, ET AL.,
Defendants.

Introduction

This Court has jurisdiction over this case pursuant to 42 U.S.C. section 1983. All parties consented to the jurisdiction of this Court as provided by 28 U.S.C. section 636(c) and Civil Local Rule 73. Defendants moved for partial summary judgment. Both parties moved to exclude certain evidence. The Court heard oral argument. Jivaka Candappa appeared for Plaintiff Stancy Nesby. Pelayo A. Llamas, Jr., Deputy City Attorney, appeared for Defendants.

The Court considered the pleadings and arguments of counsel and hereby grants partial summary judgment for Defendants, as to Nesby's claims under the Fourth and Fourteenth Amendments and 42 U.S.C. §1983, including a *Monell* claim for excessive force against the City of Oakland. Defendant Anderson had probable cause to make a traffic stop because the license plate tabs on Nesby's car were the wrong color, not the current color. It was reasonable for Anderson to verify the validity of the temporary

1 registration, once he observed it. When Nesby informed him of a felony no-bail warrant in
2 her name, he had a duty to investigate further. However, he had no duty to confirm her
3 identity in the field and taking her into custody was reasonable given that she fit the
4 parameters of the warrant as to her unique name, her sex, race and birth date. Therefore
5 the stop and detention were reasonable under the Fourth Amendment and Defendant
6 Anderson is entitled to qualified immunity. Nesby cannot maintain any claim under the
7 Fourteenth Amendment because her claim rests on the same foundation as her claim
8 under the Fourth Amendment.

9 Nesby also fails to show any basis for a claim under 42 U.S.C. §1983, since she fails
10 to show racial animus. Nesby cannot maintain a *Monell* claim against the City in the
11 absence of an underlying Constitutional violation. Nesby shows no policy regarding arrests
12 and detentions which was violated and presents no evidence whatever of Defendant
13 Anderson's training, or that it was deficient, which also eliminates any liability under *Monell*
14 for the city. Defendants do not seek summary judgment on Nesby's claim of excessive
15 force by Anderson, only her claim for excessive force against the City under *Monell*.

16 Defendants ask the Court to exclude the evidence contained in the declarations of
17 John "Toby" Saucer, who was in the car with Nesby at the time of her arrest and offers the
18 main corroboration for her allegations. The Court at this time need not rule on Defendants'
19 motion, because Saucer's evidence is relevant for the most part to Nesby's claim of
20 excessive force against Anderson, which is not before the Court at this time. The Court
21 may exclude this evidence at trial and hereby re-opens discovery for the limited purpose of
22 allowing Defendants to take Saucer's deposition.

23 Nesby asks the Court to exclude evidence from several declarations in support of
24 Defendants' motion on grounds of hearsay and vagueness. The Court finds that the terms
25 to which Nesby objects, for example "verification" as applied to the warrant, can be
26 construed using their dictionary definitions and that the declarants testified according to
27 personal knowledge of procedures and that their declarations are therefore not hearsay.
28 The documents to which Nesby objects are the warrants central to this case and the minute

1 orders of court proceedings and Nesby cannot credibly claim surprise that Defendants
2 would rely on them.

3 **Background**

4 This Court has jurisdiction pursuant to 42 U.S.C. section 1983. All parties consented
5 to trial before this Court as provided by 28 U.S.C. section 636(c) and Civil Local Rule 73.
6 Defendants move for summary judgment on a number of Nesby's claims pursuant to Rule
7 56, Federal Rules of Civil Procedure.

8 The parties were unable to arrive at a Joint Statement of Undisputed Facts. Nesby
9 and Defendants each submitted a Separate Statement of Undisputed Material Facts.
10 Defendants also submitted a Request for Judicial Notice and an Index of Evidence offered
11 in support of their motion for summary judgment. Both parties offered objections to each
12 other's evidence, which the Court considered in arriving at its decision.

13 At the parties' request, the Court continued the settlement conference, and dates for
14 pretrial conference and trial. A settlement conference was conducted by Magistrate Judge
15 Chen on March 6, 2007. The case did not settle at that time. Pretrial Conference is May 30
16 and jury trial is June 18.

17 **Defendants' Motion**

18 Stancy Nesby, an African American female, alleges constitutional claims under 42
19 U.S.C. Section 1983 for violations of her Fourth and Fourteenth Amendment rights under
20 the U.S. Constitution against the City of Oakland and Officer Anderson (the action was
21 dismissed as to Officers Williams and Wayne.) (Complaint at 4:12)

22 Defendants move for summary judgment on the following grounds:

23 1. As to Nesby's claims against Officer Anderson:

24 a) His conduct in effecting the traffic stop and detention was based on
25 probable cause and the subsequent arrest made pursuant to a facially valid
26 no-bail warrant was lawful.

b) Nesby's Fourteenth Amendment due process claims are not actionable since, under the allegations of the complaint, they arise only under the Fourth Amendment.

c) There is insufficient evidence of any violations of Nesby's right to equal protection.

d) As to all of Nesby's claims, Officer Anderson is entitled to qualified immunity.

2. As to Nesby's claims against the City of Oakland:

a) Nesby cannot maintain a *Moneill* claim against the city because there is no underlying constitutional violation.

b) Even if a constitutional violation occurred, there is insufficient evidence that Nesby suffered any such violation as a result of an official policy of the City of Oakland.

Factual Background

This is Nesby's version of the facts, with notation of Defendants' disputes as to her stated facts.

The Traffic Stop

In the afternoon of September 4, 2003, Plaintiff Stancy Nesby was stopped by Officer James Anderson of the Oakland Police Department at 2100 Telegraph Avenue near the intersection of 21st Street in Oakland. (Nesby Decl. ¶ 2 and Ex. 3, Consolidated Arrest Report; Saucer Decl. ¶ 8.) At the time of the traffic stop, Nesby was driving a 2002 Silver Dodge Intrepid, license number 4WMV283 and VIN Number 2B3HD46R32H264673, that she had purchased from Magnussen's Fremont Ford ("Magnussen's") approximately twenty (20) days prior on August 13, 2003. (Nesby Decl. ¶ 2.) Ms. Nesby was on her way to San Francisco with John "Toby" Saucer when she was stopped by Officer Anderson. (Nesby Depo, at 65:17-22, 67:12-16, 71:22-25, 72:1-21, Saucer Decl. ¶¶ 3-4.)

Ms. Nesby stopped at a bank in Oakland on Broadway near 22nd Street. (Saucer Decl. ¶ 5, Nesby Depo, at 67:17-21, 93:10-18.) She used the outside ATM machine to

1 withdraw cash. (Nesby Depo, at 95:1-15.) After leaving the bank, Ms. Nesby drove up
2 Broadway, took a right on 20th Street and another right on Telegraph Avenue. (Saucer
3 Decl. ¶ 6, Nesby Depo, at 95: 23-25, 96:1-4, 97: 1-4.) Ms. Nesby had traveled about half a
4 block down Telegraph Avenue when Officer Anderson, who was traveling in the opposite
5 direction heading towards downtown Oakland, passed Ms. Nesby's vehicle. (Saucer Decl.
6 ¶ 6.) The officer made a u-turn, got behind Ms. Nesby's vehicle and turned on his
7 overhead lights. (Saucer Decl. ¶ 7, Nesby Depo, at 97:9-25.)

8 According to the CD recording of the relevant police radio transmission, Officer
9 Anderson informed Dispatch that he was enforcing a vehicle stop and that his location was
10 20th and Telegraph. (Washburn Decl. ¶¶ 17-18.) Officer Anderson did not request cover.
11 (*Id.*) Sixteen seconds later, Officer Anderson advised Dispatch of a failure to yield and
12 gave his location as Giant Burger at 22nd and Telegraph. (*Id.* at ¶¶ 19, 23.)

13 Approximately ten minutes before advising Dispatch of the vehicle stop, Officer
14 Anderson ran a CLETS query on Ms. Nesby's vehicle license plates. (Washburn Decl. ¶¶
15 28-29, Ex. 3.) The CLETS inquiry did not show any wants on the vehicle including expired
16 registration. (*Id.*)

17 The outcome of the CLETS query is in dispute. Defendants contend that "the
18 computer indicated that the plates were indeed expired," and that Anderson then activated
19 his lights and siren. (Anderson depo at 11:1-3).

20 Officer Anderson queried CLETS about the plates a second time, a few minutes
21 after the vehicle stop at Giant Burger. (*Id.* at ¶ 29.) Plaintiff states that the CLETS queries
22 did not show that the registration on Ms. Nesby's vehicle had expired. (*Id.*) Again,
23 Defendants' version of the facts is that the CLETS query showed the plates on Nesby's
24 vehicle had expired.

25 Ms. Nesby pulled into the parking lot of ¼ Pound Giant Burger ("Giant Burger"), a
26 fast food establishment located at the intersection of Telegraph Avenue and 21st Street.
27 (Nesby Depo, at 98: 13-23, Saucer Decl. ¶¶ 8-9, Washburn Decl. ¶ 20.) The distance from
28 Telegraph Avenue at 20th Street and the Giant Burger is no more than a block and a half

1 and less than one minute of driving time. (Saucer Decl. ¶ 8.) It took Ms. Nesby about two
2 minutes to travel from the bank on Broadway to the Giant Burger parking lot. (*Id.*)

3 Officer Anderson parked his vehicle about six feet behind Ms. Nesby's vehicle.
4 (Saucer Decl. ¶ 9.) He walked up to her, greeted her and asked for her license and
5 registration. (Saucer Decl. ¶ 10, Nesby Depo, at 99:14-17, 105:3-4.) Ms. Nesby gave
6 Officer Anderson her license, advised him of the no-bail warrant which bore her name and
7 further informed him that she had just been released from jail. (Nesby Depo, at 99:23-25,
8 100:1-2, 105:7-10, Nesby Decl. ¶ 4.)

9 Mr. Saucer asked Officer Anderson why he stopped Ms. Nesby. (Saucer Decl. ¶ 10,
10 Nesby Depo, at 100:5-7.) Anderson claimed that the registration on Ms. Nesby's vehicle
11 had expired. (Saucer Decl. ¶ 10.) Ms. Nesby and Mr. Saucer pointed to the temporary
12 registration permit that was fixed on the front right windshield of Ms. Nesby's vehicle.
13 (Nesby Depo, at 100: 8-9, 105:20-23, Saucer Decl. ¶¶ 10-12.) Officer Anderson said that
14 he did not "acknowledge" that document. (Saucer Decl. ¶ 12.)

15 When Ms. Nesby stopped her vehicle in the Giant Burger parking lot, she reached
16 into her purse and retrieved a copy of the "Alameda County Sheriff's Department Prisoner
17 Property Receipt," which was given to her when she was released from Santa Rita Jail on
18 September 4, 2003. (Saucer Decl. ¶ 13, Nesby Decl. ¶ 4 and Ex. 2, Nesby Depo, at
19 106:21-25, 107:1-2, 62:1-4, 63:13-22.) The receipt documented Ms. Nesby's incarceration
20 at Santa Rita Jail on September 3, 2003. (Nesby Decl. ¶ 4, Nesby Depo, at 61: 11-13.)

21 Ms. Nesby handed Officer Anderson the Prisoner Property Receipt document when
22 he walked up to her vehicle. (Nesby Depo, at 61: 14-17, 65:3-7, Saucer Decl. ¶ 14.)

23 Defendants do not include in their statement of facts either that Nesby and Saucer
24 pointed to the temporary registration or that Nesby produced the property receipt from her
25 purse. Defendants say instead that Nesby told Anderson that she had in the trunk of her
26 car the property receipt from Santa Rita Jail, showing that she had just been released from
27 there and that Anderson allowed her to look for it, but she couldn't find it. (Anderson Depo
28

1 at 34:21-22, 36:6-9, 15-21).

2 Ms. Nesby told the officer that there was a warrant for a person who had used her
3 name and that she was not the person wanted in connection with the warrant. (Nesby
4 Decl. ¶ 4, Saucer Decl. ¶ 15.) She said that an unknown woman had stolen her identity
5 and that she was released from Santa Rita jail on September 4 after the authorities had
6 confirmed that the warrant in question was not for her. (Saucer Decl. ¶ 15, Nesby Depo, at
7 65:12-16, 65:23-25, 66:1-4, 105:11-16, 107:15-25, 108:1-7.) She explained to the officer
8 that she would not have been released from jail on September 4, the day of the traffic stop,
9 if she were the person wanted in connection with the no-bail warrant. (Nesby Depo, at
10 100:18-23.)

11 The Arrest

12 The officer told Ms. Nesby to step out of the vehicle and without waiting for her to
13 exit the vehicle, tried to pull her out. (Saucer Decl. ¶ 16, Nesby Depo, at 101:2-4, 113:25,
14 114:1-24.) Ms. Nesby emerged from the vehicle. (Saucer Decl. ¶ 16, Nesby Depo, at 101:
15 5, 114:24-25.) The officer turned her around so that her back was to him. (Saucer Decl.
16 ¶ 17.) Ms. Nesby continued to tell the officer that the warrant was not for her and that she
17 was innocent. (*Id.*) He ignored her. (*Id.*) Several police vehicles arrived on the scene.
18 (Saucer Decl. ¶ 18, Washburn Decl. ¶¶ 23-24.) Officer Anderson requested a wagon 24
19 seconds after advising Dispatch of the vehicle stop. (Washburn Decl. ¶¶ 21-22.)

20 Officer Anderson arrested Ms. Nesby on the basis of information in an electronic
21 warrant that was generated pursuant to a bench warrant issued for an individual named
22 "Stancy Nesby," residing at 142 Harbor Drive. (Nesby Decl, Ex. 3, Miller Decl. ¶ 30 and Ex.
23 7, Washburn Decl. ¶ 41.) The electronic warrant abstract states that the individual wanted
24 on the warrant was a black female with a date of birth of May 12, 1976. (Miller Decl. at ¶
25 31, Washburn Decl. ¶ 41.) The warrant abstract does not state any other distinguishing
26 characteristics or information pertaining to the wanted person such as height, weight or eye
27 color. (Miller Decl. at ¶ 32, Washburn Decl. ¶ 42.)
28

Oakland Police Department officers have access to the Automated Warrant System (“AWS”), CLETS, NCIC and DMV databases from the mobile computer terminals in their patrol vehicles. (Bolton Depo, at 92:3-11, Ex. E.) Officers can conduct DMV, criminal history, probation or parole checks to ascertain the identity of a detainee. (Bolton Depo, at 100:6-25, 101:1-5.) NCIC checks would also return particular descriptive information such as height and weight of the subject queried. (Bolton Depo, at 94:21-25, 95:1-10.) Officer Anderson and the Oakland dispatchers did not make any inquiries to ascertain the particular characteristics of the subject wanted in connection with the warrant before arresting Ms. Nesby. (Miller Decl. ¶¶ 33-39, Washburn Decl. ¶¶ 43-49.)

Alleged Excessive Force During the Arrest

Nesby alleges numerous facts in support of a claim of excessive force against Defendant Anderson. Defendants do not seek summary judgment on this claim, except as applied to the City under *Monell v Dept. Of Social Services of City of New York*, 436 U.S. 658 (1978).

When Ms. Nesby got out of her vehicle, two Caucasian male officers rushed towards her and assisted Officer Anderson with Ms. Nesby's arrest. (Saucer Decl. ¶ 19.) The officers grabbed Ms. Nesby by her blouse, took her around to the passenger side of her car, pushed her against the vehicle and bent her over the hood. (Nesby Depo, at 101:5-8, 121:11-18, 126:3-12, Saucer Decl. ¶ 20-21.) Ms. Nesby's blouse was raised above her chest, her skirt was lifted above her waist, her underwear and breasts and buttocks were exposed. (Nesby Depo, at 101: 9-15, 103:12-25, Saucer Decl. ¶ 21.) The officers kept Ms. Nesby bent over her vehicle while they handcuffed her. (Saucer Decl. ¶ 22.) The officers ran their hands over Ms. Nesby's body in what appeared to be a full body search and one officer squeezed the cheek of her buttocks. (*Id.*)

Ms. Nesby was handcuffed after her hands were pulled up behind the back of her head. (Nesby Depo, at 118:7-22, 119: 16-25, 120:1-7.) Her arms were raised so high behind her back that it seemed unnatural. (Saucer Decl. ¶ 21.) Ms. Nesby was in excruciating pain because her arms would not extend that far behind her back. (Nesby

1 Depo, at 118:15-25, 119:1-7, 120: 13-15, 121: 1-10.) The handcuffs were very tight and
2 Ms. Nesby told Officer Anderson that they were hurting her really badly. (Nesby Depo, at
3 134:8-25.) He did not adjust the handcuffs. (Nesby Depo, at 136:5-9.)

4 The officers tore Ms. Nesby's blouse. (Nesby Depo, at 122:8-11.) They continued
5 to apply pressure on Ms. Nesby for a few more minutes after the handcuffs were applied.
6 (*Id.* at 122:19-24, 124:23-25, 125:1-10.) Ms. Nesby was in pain and "everything was
7 showing." (*Id.* at 122:25, 123:1-2, Saucer Decl. ¶ 24.) She was crying. (*Id.* at 115:1-4.)
8 She did not physically resist or struggle with the officers. (*Id.* at 118:13, Saucer Decl. ¶ 23.)
9 She did not yell at the officer. (Nesby Depo, at 115: 5-9.) Ms. Nesby kept telling Officer
10 Anderson that she was the victim. (Nesby Depo, at 117: 20-24, Saucer Decl. ¶ 24.)

11 Mr. Saucer told the officers that Ms. Nesby's skirt was raised, that they were
12 exposing her. (Nesby Depo, at 128: 10-15, Saucer Decl. ¶ 26.) The officers told him to
13 stay in the car. (Saucer Decl. ¶ 25, Nesby Depo, at 115: 17-18, 125:15-21.) Mr. Saucer
14 pulled Ms. Nesby's skirt down. (Saucer Decl. ¶ 27, Nesby Depo, at 115:19-22, 125:22-23,
15 128:1-8, 129:1-25, 130:1-10.) The officers then handcuffed Mr. Saucer. (Saucer Decl. ¶
16 28, Nesby Depo, at 115:22-24, 125:23-25.) After Mr. Saucer pulled down Ms. Nesby's
17 skirt, she was taken to the paddy wagon. (Nesby Depo, at 128:23-25, 133:11-13, 133:22-
18 25, 134:1-3, Saucer Decl. ¶¶ 30-31.)

19 Mr. Saucer witnessed a Caucasian male officer open the trunk of Ms. Nesby's
20 vehicle and search inside. (Saucer Decl. ¶ 29.) The officer who conducted the search of
21 the trunk locked Ms. Nesby's vehicle, threw her car keys in the trunk and shut it. (*Id.* at ¶
22 32.) That same officer thereafter released Mr. Saucer. (*Id.* at ¶ 33.)

23 Officer Anderson promised Ms. Nesby that he would ensure that Ms. Nesby's prints
24 were compared against the subject's prints on file with issuing agency, San Francisco
25 (Nesby Depo, at 108:19-22, 139:19-22.) But Anderson did not follow through on his
26 promise. (Nesby Depo, at 139:22-24, 108:24-25, 109, 110:1-4.) After Ms. Nesby was
27 transported to the Oakland City Jail, Officer Anderson did not know what happened to her.
28 (Candappa Decl. ¶ 8, Ex. 5-Synopsis of Anderson IA interview.)

Detention at Oakland City Jail

Ms. Nesby was locked in a cell at the Oakland Police Department jail. (Oakland City Jail) (Nesby Depo, at 140:11-20.) "Many hours later," after a shift change, she spoke with another jailer who followed up on her request to verify whether she was wanted in connection with the San Francisco warrant. (Nesby Depo, at 140:21-25, 141:1-12.) A few hours later, she was released. (Nesby Depo, at 141:13-17.)

At 10:10 p.m., the order to release Ms. Nesby was signed by the jail supervisor, Anthony Wynne, a civilian employee. (Davis Depo, at 36:5-25, 37:1-16, 52:14-17, Washburn Decl. ¶¶ 37-38.) The order to release Ms. Nesby states that the warrant did not belong to Ms. Nesby and that someone else was using her name. (Davis Depo, at 36:17-24, Washburn Decl ¶ 37, Ex. 7.) Wynne, however, did not have a recollection of the incident when he was interviewed by Internal Affairs. (Candappa Decl ¶ 10, Ex. 7.)

A prisoner must be released no sooner than four hours after the order to release is received. (Davis Depo, at 51:25, 52:1-17.) An order to release that is approved takes the utmost priority. (Davis Depo, at 56:19-25, 57:1-5.) The Oakland City Jail Certificate Card, "402 Form" indicates that Ms. Nesby was released at 11:18 p.m. (Davis Depo, at 52:18-25, 53:1-12.) However, the 402 Form does not always accurately document a prisoner's release time. (Davis Depo, at 52:18-25, 53, 54:1-7.) According to the jail activity record, Ms. Nesby called her mother from jail on September 5, 2003, at 12:40 a.m. (Nesby Decl. ¶ 6, Ex. 4.) Ms. Nesby signed a property release. (Nesby Depo, at 183:15-25, 185:1-18, Nesby Decl, Ex. 3.) The release was dated September 5, 2003. (Nesby Decl. ¶ 5 Ex. 3.) Ms. Nesby was eventually released on September 5, 2003, at approximately 1:00 a.m. (Nesby Depo, at 144:8-11.)

Ms. Nesby suffered bodily injuries consequent to her arrest. (Saucer Decl. ¶¶ 38-39, Nesby Depo, at 144:16-22.) Both her wrists were swollen, one more than the other. (Nesby Depo, at 155:1-2.) Both wrists were discolored, one wrist was purple, the other red. (Nesby Depo, at 155:3-7.) The pain remained even after the bruising dissipated. (Nesby Depo, at 155:15-20.) The pain lasted about two weeks. (Nesby Depo, at 155:21-23.) One wrist was more painful than the other. (Nesby Depo, at 155:25, 156:1-16.) The

1 excruciating pain lasted for about a week and half and Ms. Nesby experienced mild pain for
2 a while thereafter. (Nesby Depo, at 156:2-9.) Ms. Nesby was traumatized by the entire
3 experience. (Nesby Depo, at 157, 158, 159:1-13.)

4
5 **The Oakland Police Department Does Not Have a Policy Articulating the
Particularity of Description Requirement on a Warrant.**

6 The published policy of the Oakland Police Department states that whenever there is
7 a question about the identity of a person arrested in connection with a warrant, the
8 transporting officer must refer the warrant to the patrol division supervisor for a final
9 decision as to whether or not it should be served. (Bolton Depo, at 78:14-25, 79:1-9.)

10 However, the Oakland Police Department does not have a policy as to what constitutes an
11 adequate or sufficiently particular description on a warrant. (Bolton Depo, at 67:22-25.)

12 The Oakland Police Department does not have a policy that would provide guidance and
13 direction to officers in circumstances where the description on a warrant is deemed
14 inadequate. (Bolton Depo, at 67:21.) And the Oakland Police Department does not have a
15 custom or practice of checking FBI databases in circumstances when the identity of a
16 subject detained in connection with an electronic warrant is in issue. (Bolton Depo, at
17 103:6-21.)

18 Officers have subjective discretion to determine the sufficiency of the particular
19 description requirement in a warrant. (Bolton Depo, at 68:1-3.) According to the published
20 policy, if there is a doubt that the detainee is the person described in the warrant, the
21 benefit of the doubt shall be given to the detainee. (Bolton Depo, at 69:9-23, Bolton Depo,
22 Ex. B.) Officers are required to perform a reasonable investigation. (Bolton Depo, at
23 69:24-25, 70:1-3.)

24 Oakland Police Department's General Order E-6 does not provide any guidance as
25 to what would constitute an adequate description under California Penal Code section
26 850(b), which sets forth the information that must be included in a serviceable warrant.
27 (Bolton Depo, at 74:7-23, Bolton Depo, Ex. B.) There has been no attempt to articulate a
28 coherent application of the description requirement in a warrant. (Bolton Depo, at 74:24-
25, 75:1-3, Bolton Depo, Ex. B.) There are no department guidelines articulating what

1 officers should do to ascertain the identity of a person wanted in connection with an
2 electronic warrant. (Bolton Depo, at 81:3-25, 86-89, 90:1-18.)

3 **Oakland Police Department Officers Do Not Receive Adequate Training**
4 **About The Particularity of Description Requirement on a Warrant.**

5 Oakland Police Department officers and trainee officers do not receive training about
6 the Automated Warrant System. (Figueroa Depo, at 43:19-25, 44:1-7.) The Oakland
7 Police Department does not provide training to its officers on reading and understanding
8 the NCIC system. (Figueroa Depo, at 45:19-23.) There are no training bulletins on the
9 automated warrant system. (Figueroa Depo, at 44:8-11.) There are no training bulletins on
10 the NCIC system. (Figueroa Depo, at 45:19-23.)

11 The training manual on Laws of Arrest, which is used by instructors at the Police
12 Academy, devotes about three pages to warrants. (*Id.*, Ex. A) The section on warrants
13 references California Penal Code sections 815, 817, 840 and 849. (Figueroa depo, at 43,
14 Ex. A.) Section 850(b) is not mentioned. (*Id.*) Students at the Police Academy do not
15 receive any training about the particular description requirement of a warrant. (Figueroa
16 Depo, at 41.)

17 **The Oakland Police Department Had A Custom or Practice Of Inaction**
18 **And Indifference In Complying With The Mandatory Policy That A**
19 **Subject Must Not Be Detained For More Than Four Hours Pending**
20 **Confirmation Of A Warrant.**

21 Oakland Police Department Prisoner Release Procedures mandates the release,
22 within four hours, of a prisoner being held on a warrant when the arresting agency does not
23 confirm the warrant. (Davis Depo, at 23:6-25, 24:1-13, 23-25, 25:1-3, 30:6-8, Ex. A.) In
24 practice, the Oakland Police Department does not comply with the mandatory policy that a
25 subject must not be detained for more than four hours pending confirmation of a warrant.
26 (Davis Depo, at 28:1-25, 29:1-10.) Jail staff did not receive any training regarding the
27 policy mandating detention for no more than four hours for unconfirmed warrants. (Davis
28 Depo, at 34:3-7.)

Jail staff have access to NCIC and FBI databases to confirm a warrant, but it is
usually done at the County level. (Davis Depo, at 38:1-9, 41:17-25, .42:1-13.) The inmate

1 would therefore sit in jail until the County responded. (Davis Depo, at 42:14-16.) FBI
2 databases can be checked assuming the individual queried has an FBI record. (Davis
3 Depo, at 38:19-21.) A subject's FBI number could be run to extract information from FBI
4 databases. And a subject's FBI number could be obtained from the NCIC database.
5 (Davis Depo, at 38:1-9.)

6 As a supervisor and the person most knowledgeable about confirmation of warrants
7 in the Oakland City Jail, Sergeant Davis claimed to be ignorant of the Oakland Police
8 Department Prisoner Release Procedures mandating the release of a prisoner within four
9 hours when the arresting agency does not confirm the warrant for the prisoner in question.
10 (Davis Depo, at 30:6-8.) The policy is clear, however, that a detainee must be released
11 within four hours if the warrant is not confirmed. (Davis Depo, at 29:4-7.)

12 Analysis

13 Summary judgment is appropriate when it is demonstrated that there exists no
14 genuine issue as to any material fact, and that the moving party is entitled to judgment as a
15 matter of law. Fed.R.Civ.P. 56 (c); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

16 Under summary judgment practice, the moving party always bears the initial
17 responsibility of informing the district court of the basis of its motion, and identifying those
18 portions of "the pleadings, depositions, answers to interrogatories, and admissions on file
19 together with the affidavits, if any," which it believes demonstrate the absence of a genuine
20 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[W]here the
21 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary
22 judgment motion may properly be made in reliance solely on the 'pleadings, depositions,
23 answers to interrogatories, and admissions on file.' " *Id.* at 324, 106 S.Ct. 2548. Indeed,
24 summary judgment should be entered against a party who fails to make a showing
25 sufficient to establish the existence of an element essential to that party's case, and on
26 which that party will bear the burden of proof at trial. *Id.* at 322, 106 S.Ct. 2548. In such a
27 circumstance, summary judgment should be granted, "so long as whatever is before the
28

1 district court demonstrates that the standard for entry of summary judgment, as set forth in
2 Rule 56(c), is satisfied.” *Id.* at 323, 106 S.Ct. 2548.

3 If the moving party meets its initial responsibility, the burden then shifts to the
4 opposing party to establish that a genuine issue as to any material fact actually does exist.
5 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-87 (1986); *First*
6 *Nat’l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-289 (1968).

7 In attempting to establish the existence of this factual dispute, the opposing party
8 may not rely upon the denials of its pleadings, but is required to tender evidence of specific
9 facts in the form of affidavits, or admissible discovery material, in support of its contention
10 that the dispute exists. Fed.R.Civ.P. 56(e). The opposing party must demonstrate that the
11 fact in contention is material, that is, a fact that might affect the outcome of the suit under
12 the governing law, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), and that the
13 dispute is genuine, that is, the evidence is such that a reasonable jury could return a verdict
14 for the nonmoving party, *Id.* at 251-52.

15 In the endeavor to establish the existence of a factual dispute, the opposing party
16 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
17 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
18 versions of the truth at trial.” *First Nat’l Bank*, 391 U.S. at 289, 88 S.Ct. 1575. Thus, the
19 “purpose of summary judgment is to ‘pierce the pleadings and to assess the proof in order
20 to see whether there is a genuine need for trial.’ ” *Matsushita*, 475 U.S. at 587, 106 S.Ct.
21 1348 (quoting Rule 56(e) advisory committee’s note on 1963 amendments).

22 In resolving the summary judgment motion, the Court examines the pleadings,
23 depositions, answers to interrogatories, and admissions on file, together with the affidavits,
24 if any. Rule 56(c); *SEC v. Seaboard Corp.*, 677 F.2d 1301, 1305-06 (9th Cir.1982). The
25 evidence of the opposing party is to be believed, and all reasonable inferences that may be
26 drawn from the facts placed before a court must be drawn in favor of the opposing party.
27 *Anderson*, 477 U.S. at 255, 106 S.Ct. 2505. Nevertheless, inferences are not drawn out of
28 the air, and it is the opposing party’s obligation to produce a factual predicate from which

1 the inference may be drawn. *Richards v. Nielsen Freight Lines*, 602 F.Supp. 1224, 1244-45
2 (E.D.Cal.1985), aff'd, 810 F.2d 898 (9th Cir.1987).

3 Finally, to demonstrate a genuine issue, the opposing party "must do more than
4 simply show that there is some metaphysical doubt as to the material facts Where the
5 record taken as a whole could not lead a rational trier of fact to find for the nonmoving
6 party, there is no 'genuine issue for trial.' " *Matsushita*, 475 U.S. at 586-87, 106 S.Ct. at
7 1356.

8 **Summary Judgment Should Be Granted**

9 **Nesby Fails to Show Material Facts in Dispute Regarding *Monell* Claim Against** 10 **City Under 42 U.S.C. Section 1983 for 4th Amendment Violation or Excessive Force.**

11 Defendants' motion for summary judgment should be granted because Nesby's
12 opposition to the motion presents no evidence establishing a material issue of fact for trial
13 relative to her §1983 claims. While Defendants' motion does not seek summary judgment
14 on Nesby's excessive force claim against Officer Anderson, the motion does seek summary
15 judgment on the excessive force *Monell* claim against the City of Oakland. (See
16 Defendants' Memorandum of Points and Authorities in Support of MSJ at 13:5-6; 14:3-7.) It
17 should be noted that Nesby has dismissed her equal protection and substantive due
18 process claims. (Oppn. at 1 fn.1.)

19 The undisputed facts show, as a matter of law, that Nesby's traffic stop for expired
20 registration tabs and subsequent arrest pursuant to a facially valid no-bail felony warrant
21 were both lawful. Nesby's evidence is insufficient to establish a *Monell* claim against the
22 city as to any of her constitutional claims. Nesby has offered no evidence that Officer
23 Anderson's training was insufficient or that it fell below generally accepted training
24 standards in the law enforcement field. Neither of Nesby's experts criticized the Oakland
25 Police Department's training or procedures.

26 The belated declaration of Toby Saucer submitted by Nesby, that contradicts and
27 exceeds the scope of Nesby's own testimony, could be stricken because Saucer's contact
28 information was not disclosed through supplemental disclosures as required by FRCP Rule

1 26(e). Defendants were prevented from investigating and deposing the witness. Nesby,
2 who claimed not to have his contact information, has now produced a declaration by the
3 witness that Defendants characterize as a devious attempt to avoid summary judgment. In
4 fact, Saucer's declaration is cited by Nesby throughout the Opposition at least 39 times
5 and numerous times in support of her response to Defendants' statement of undisputed
6 facts. Where facts were not previously in dispute, Mr. Saucer testifies in his declaration to
7 new contradictory facts.

8 Defendants contend that Nesby's tactics are in clear violation of Rule 26 and that the
9 declaration should be stricken from her opposition to Defendants' motion pursuant to FRCP
10 37. (See Defendants' Objections to Evidence offered in Support of Nesby's Opposition at
11 1:23-3:9.)

12 Further, Nesby relies heavily on unqualified and admittedly mistaken and
13 contradictory expert declarations to create otherwise non-existent factual disputes. (See
14 Defendants' Objections to Plaintiff's Evidence.) Indeed, the experts (particularly Washburn)
15 admitted in their depositions that almost everything in their declarations submitted in
16 support of Nesby's opposition is incorrect or otherwise unreliable. (*Id.*) As such, to the
17 extent that Nesby relies on such evidence to generate issues of fact, it should be
18 disregarded by the Court.

19 Nesby incorrectly contends that Defendants' motion does not challenge Nesby's
20 excessive force claim in any respect. (Oppn. at 10:13-15.) Defendants' motion addresses
21 all of Nesby's constitutional claims generally with respect to her *Monell* claim against the
22 City. While the motion does not seek summary judgment as to Nesby's excessive force
23 claim against Officer Anderson, the Defendants argue that Nesby has not suffered a
24 constitutional injury caused by any policy of the City. (Defendants' MSJ at 12:12-13; 13:5-
25 6.) The city argued that even if a constitutional violation occurred during the course of
26 Nesby's detention and arrest (which would naturally include excessive force), her *Monell*
27 claim against the City still fails. (*Id.* at 13:5-6.) This argument applies to all of Nesby's
28 constitutional claims.

1 The City further contends that Nesby's complaint alleges no basis for recovery under
2 any of the grounds for imposing municipal liability. (*Id.* at 14:3-4.) More specifically, the City
3 argued that "[p]laintiff's reference to the fact that a lawsuit alleging a pattern and practice of
4 constitutional violations was filed against the City (the "Riders" lawsuit) and subsequently
5 settled is certainly not evidence of the existence of a policy or practice of unlawful arrests,
6 racial profiling, or excessive force in that case or this one." (*Id.* at 14:3-7.)

7 **A. Nesby's Detention and Arrest Were Lawful and Nesby's Experts' Opinions**
8 **Do Not Establish any constitutional Violations.**

9 **Officer Anderson's Traffic Stop To Investigate Nesby's Expired Registration**
10 **Tab Was Lawful.**

11 Police officers may make traffic stops whenever there is reasonable suspicion to
12 believe that a traffic violation has occurred. *Whren v. U.S.*, 517 U.S. 806, 810 (1996). The
13 issue here then is whether Officer Anderson had reasonable suspicion to believe that
14 Nesby had expired registration when he pulled her over. It is undisputed that Officer
15 Anderson, while positioned in his police car behind Nesby's vehicle, saw that Nesby had
16 expired registration tabs. (Defendants' Separate Statement of Undisputed Facts ("SSUF")
17 No. 2; Anderson Depo. at 9:11-17.) He knew that the tabs were expired because they were
18 not the right color. (Anderson Depo. at 9:24-25.) Nesby does not dispute these facts.
19 Rather, she cites to her non-responsive deposition testimony that she showed Anderson
20 the temporary registration in her window (see Plaintiff's response to SSUF No. 2), after
21 Anderson had already pulled her over and approached her vehicle. (Nesby Depo at 99:13-
22 23.)

23 The fact that Nesby showed Officer Anderson her temporary registration after the
24 stop had already been made, if true, does not disprove that Anderson had already
25 observed the expired tabs on the rear of her vehicle when he pulled her over. The issue is
26 not whether Nesby's car was actually temporarily registered, but whether Officer Anderson
27 had probable cause to believe that it was not and that a traffic violation had occurred.
28

1 Hence, Nesby's argument that Officer Anderson did not have reasonable suspicion
2 to stop Nesby because she had a lawful operating permit misses the point. This is not a
3 case involving a traffic stop because someone has temporary tags as in *U.S. v. Wilson*, 205
4 F.3d 720 (4th Cir. 2000) cited by Nesby. (Oppn. at 12, fn. 6.) The temporary identification
5 which was displayed in Nesby's front windshield was not something that Officer Anderson
6 could have seen from behind Nesby's car, or that he could have validated even from in
7 front of her car. Thus, there is no dispute that Officer Anderson did not see evidence of the
8 temporary registration before pulling Nesby over as in the unpublished case of *Imperiale v.*
9 *City of San Diego*, 2005 WL 1463474, 137 Fed.Appx. 13, 14 (9th Cir. 2005) cited by Nesby.
10 (Oppn. at 12, fn. 6.)

11 Defendants contend that Officer Anderson verified that Nesby's license plates were
12 expired before he activated his lights and siren to make the traffic stop, and Nesby has
13 offered no competent evidence to the contrary. (SSUF No. 3, 4; See Defendants'
14 Objections to Evidence.) Nesby has not disputed with competent evidence Officer
15 Anderson's testimony that he saw Nesby's expired registration tabs and confirmed that they
16 were expired before pulling her over as set forth in Fact Nos. 2, 3 and 4.

17 Even if the CLETS inquiry showed that Nesby's registration was current, as she
18 contends and Defendants dispute, even so, the absence of current stickers on her license
19 plate was sufficient to justify a stop, to determine if she had valid temporary registration as
20 required by law. California Vehicle Code section 5202 states that license plates are to be
21 attached for the period of their validity. When a vehicle has no valid plate or plates, as in
22 this instance where the stickers were not current, "Special permits issued in lieu of plates
23 shall be attached and displayed on the vehicle for which issued during the period of their
24 validity." Even if the temporary registration would have been visible if Anderson's police car
25 had approached Nesby's car from the front and then made a U-turn, as she contends, the
26 officer was still entitled to examine the temporary registration to determine if it was valid,
27 and not just a piece of cardboard stuck in the windshield of her car. Even if the facts are as
28 alleged by Nesby, Officer Anderson had reasonable suspicion that Nesby's registration was

1 expired and had probable cause to stop her and determine if she was displaying a
2 temporary tag in compliance with the Vehicle Code.

3 **The Detention Did Not Exceed the Scope of the Traffic Stop.**

4 Nesby contends that her detention exceeded the scope of the traffic stop. This
5 contention, however, is undermined by the undisputed evidence. Detentions which are
6 initially justified as *Terry* investigatory stops, or traffic stops, will not justify seizures which
7 are unreasonable in length or scope in light of their original purpose. *Terry v. Ohio*, 392
8 U.S. 1 (1968).

9 For officers to continue to hold someone, to broaden the scope of the investigation,
10 or to progress to an arrest, they must legally obtain sufficient evidence to justify the greater
11 intrusion on the person's liberty. *Bennett v. City of Eastpointe*, 410 F.3d 810 (6th Cir. 2005).

12 Here, it is undisputed that Officer Anderson pulled Nesby over for having expired
13 registration tabs and that upon contact with Anderson, Nesby immediately began telling him
14 that she had no- bail warrants outstanding in her name. (SSUF No. 9) Although Nesby
15 agrees that this fact is disputed, her contention is contradicted by her own deposition
16 testimony. Nesby's response to this putative fact is, "Ms. Nesby gave Officer Anderson her
17 license, advised him of the no-bail warrant which bore her name..." (Plaintiff's response to
18 SSUF No. 9.) Indeed, Nesby claims she always tells every officer she comes in contact
19 with before they walk away to run her name. (Plaintiff's response to SSUF No. 10.) At this
20 point, Officer Anderson had sufficient reason to justify prolonging the detention to confirm
21 the existence and status of any warrants in Nesby's name.

22 A reasonable officer conducting a traffic stop confronted with a detainee's admission
23 that she has warrants for her arrest would prolong the investigation to investigate and
24 conduct a warrant check. Indeed, it would be unreasonable for an officer not to do so. The
25 fact that Nesby also told the officer that she had either taken care of the warrants or that
26 she had just been released from jail did not render further investigation unnecessary. As
27 Officer Anderson stated in his declaration and in his deposition, it is not uncommon for a
28 person who has a warrant for his or her arrest to say that the warrant has been cleared up

1 or is really for someone else in order to avoid being arrested. Nesby contends that this is
2 an opinion rather than a fact. (Pltf's response to SSUF No. 36) It is, however, a factual
3 statement based on Officer Anderson's 17 years of experience as a police officer, not
4 merely an opinion. Thus, Fact Number 36 is not disputed.

5 Similarly, assuming that Nesby showed Officer Anderson her temporary registration
6 attached to the right front windshield as she claims, he was justified in investigating her
7 admission that she had two no-bail warrants in her name. Thus, Nesby's argument that the
8 detention should have been aborted immediately after she showed him the temporary
9 operating permit and she told him that she had no-bail warrants for her arrest is wholly
10 without merit. Under normal circumstances, it is true, that an officer who stops a driver to
11 investigate the status of her registration and then finds that she has valid temporary
12 registration, without more, would have no basis to detain her any longer. Those, however,
13 are not the facts in this case. The officer was duty bound to investigate Nesby's admission
14 that she had two no-bail warrants in her name.

15 Nesby's reliance on *U.S. v. McSwain*, 29 F.3d 558, 561 (10th Cir. 1994) is
16 misplaced. (Oppn. at 14 8-14.) *McSwain* is distinguishable and inapplicable to the facts of
17 this case. In that case, the court found that the traffic stop was unlawful because the
18 officer's reasonable suspicion regarding McSwain's registration sticker was completely
19 dispelled prior to the time he questioned McSwain. In this case, Nesby began telling Officer
20 Anderson about her felony no-bail warrants when he approached her vehicle and asked for
21 her license and registration. Hence, even if the status of her registration could have been
22 dispelled by the sticker on the windshield on the other side of the car, he was then faced
23 with new information that required further investigation.

24 **Officer Anderson Had Probable Cause to Arrest Nesby Pursuant to a Facially**
25 **Valid No-Bail Warrant.**

26 Nesby argues that Anderson lacked probable cause to arrest her since the warrant
27 was invalid because it did not meet the particularity requirements of the Fourth
28

1 Amendment. However, the warrant did meet the particularity requirements under both
2 state and federal law, and the cases Nesby cites are inapposite.

3 California Penal Code Section 850 sets out the particularity requirements for
4 electronic arrest warrants. Specifically, Section 850(b) provides that "... an abstract of the
5 warrant as herein referred to shall contain the following information: the warrant number,
6 the charge, the court or agency of issuance, the subject's name, address and description,
7 the bail, the name of the issuing magistrate or authority, and if the offense charged is a
8 misdemeanor whether the warrant has been certified for night service."

9 According to Nesby's own experts, the warrant at issue in this case contained all
10 nine of the elements required by §850. (See Declaration of Pelayo Llamas in Support of
11 Defendants' Reply, Exhibit C at 161:16-165:11; Exhibit D at 144:6-149:12.).

12 In Ex. C, Plaintiff's expert, Valeria Washburn admitted that the license plate for
13 Nesby's car was only queried once, not twice, that it would not necessarily show up on the
14 kind of query that was made and that the descriptors on the warrant of the name, date of
15 birth, race and gender all matched exactly the San Francisco warrant for Ms. Nesby. In Ex.
16 D, Taylor Miller, also an expert for Plaintiff, testified that he didn't know whether or not the
17 warrant on which Nesby was arrested met the factors required by Penal Code section 850.
18 This Court finds that the circumstances in this case are distinguishable from *Rogan v. City*
19 *of Los Angeles*, 668 F.Supp. 1384, 1391 (C.D. Cal. 1987)

20 In *Rogan*, the warrant in question had an alias or *aka* on its face. Thus it did not
21 contain the subject's correct legal name. The court noted that an arrest warrant does not
22 meet the Fourth Amendment particularity requirement unless it provides a person's correct
23 legal name. See *Rogan* at 1391. Such a problem does not exist in this case. The warrant in
24 this case did not contain an alias or *aka*. Indeed, the warrant displayed Nesby's correct
25 legal name - - Stancy Nesby - - which Officer Anderson noted was unique. (SSUF No. 20.)
26 The warrant also contained her correct birth date, race and sex – more than required under
27 state and federal particularity requirements. (*Id.*) Nesby argues that this fact is disputed
28 because there is no evidence that the name Stancy Nesby is unique. (Plaintiff's response

to SSUF No. 20.) It is a fact, however, that anyone can recognize as true. Even Nesby's own experts acknowledged the uniqueness of her name. (Llamas Decl. at Exhibit C at 61:20-62:15; Exhibit D at 129:17-130:1.) It is by no means a common name, and Nesby has provided no evidence to the contrary.

Notwithstanding the uniqueness of Nesby's name, the subject warrant meets the Fourth Amendment's particularity requirements because it does provide Nesby's correct legal name. Generally, the inclusion of the name of the person to be arrested on the arrest warrant constitutes a sufficient description to satisfy the Fourth Amendment requirement that the subject be described with particularity. Fed.R.Crim.Proc. 4(c); 18 U.S.C.A. Const. Amend. 4. Unlike the authorities in *Rogan*, Officer Anderson had no reason to suspect that the name on the warrant was not the real name of the intended arrestee, and no heightened particularity requirements which applied in *Rogan* are applicable to this case.

Nesby's argument that the warrant at issue did not state the actual name of the person sought and therefore is invalid is incorrect. At the time of Nesby's arrest, Anderson had no reason to believe that Plaintiff was not the Stancy Nesby named in the warrant. Nesby has cited no legal authority for the proposition that an otherwise facially valid warrant is rendered invalid when a detainee named and described in the warrant claims that he or she is a victim of identity theft or gives some other alibi.¹ Indeed, faced with Nesby's claims that she was not the person listed in the warrant and the consistent description (birth date, race and sex), Anderson believed it was necessary to take her into custody to determine whether it was really her. Only fingerprints could show whether Nesby was the person sought in the warrant.²

Nesby cites the inapposite case of *Wanger v. Bonner*, 621 F.2d 675, 682-683 (5th Cir. 1980) for the proposition that an arrest warrant with a proper name, but improper address is invalid and thus violates the Fourth Amendment. *Wanger* is distinguishable

¹ Nesby's expert acknowledged that it is common for people to lie about warrants. (Llamas Decl., Exhibit D at 133:12-135:9.)

² Nesby's expert agrees that it was not unreasonable to take Nesby to jail for fingerprints. (Llamas Decl., Exhibit C at 161:16-165:11.)

1 because it involved a misdemeanor search warrant served in the middle of the night at the
 2 home of a person who was able to establish that he was not the person named in the
 3 warrant. Nesby oversimplifies the holding in *Wanger* out of context. The case at bar does
 4 not involve a warrant with the right name being served at the wrong address. This case is
 5 about an officer with knowledge of a facially valid warrant (under state or federal standards)
 6 with the correct name, birth date, race and sex of Nesby who by her own admission had
 7 outstanding felony no-bail warrants in her name.

8 The seminal case on this question is *Baker v. McCollan* 443 U.S. 137 (1979). In
 9 *Baker*, a warrant was issued in the name of Linnie McCollan based on the acts of Leonard
 10 McCollan, who was using Linnie's driver's license with a substituted photograph. Linnie was
 11 arrested for running a red light and then held for three days because of the warrant. He was
 12 released after deputies compared his appearance with the photograph of Leonard, which
 13 was associated with the warrant. The Supreme Court held that the arrest and detention did
 14 not constitute a violation of plaintiff's Fourth Amendment rights under 42 U.S.C. § 1983.

15
 16 "Whatever claims this situation might give rise to under state tort law, we
 17 think it gives rise to no claim under the United States Constitution.
 18 Respondent was indeed deprived of his liberty for a period of days, but it
 19 was pursuant to a warrant conforming, for purposes of our decision, to the
 20 requirements of the Fourth Amendment."
 21 (*Baker v. Mccollan*, supra 443 U.S. at 144.) "[W]e

22 are quite certain that a detention of three days over a New Year's weekend does not and
 23 could not amount to such a deprivation [of due process]." *Id.* at 145.

24 In cases that have declined to follow *Baker* the officers knew they were holding an
 25 innocent person, even though they had a facially valid warrant for his arrest, or they
 26 unreasonably relied on the warrant in light of other information they possessed.³ That is not

27 ³ See e.g., *Berg v. County of Allegheny*, 219 F.3d 261, 273 (3d Cir. 2000)(apparently
 28 valid warrant does not make officer immune from suit if reliance on it is unreasonable in light
 of other information the officer possesses); *Kennell v. Gates*, 215 F.3d 825 (8th Cir. 2000)(report,
 based on fingerprints, over in-house computer message system indicating that wrong sister
 was in custody was sufficient to allow jury to find that officer had actual knowledge of
 substantial risk that plaintiff was mistakenly imprisoned); *Young v. City of Little Rock*, 249 F.3d
 730 (8th Cir. 2001)(where police arguably had sufficient information to realize they were holding
 the wrong person, there was close question whether 4th Amendment was violated, but officers
 entitled to qualified immunity).

1 the case here. Anderson had nothing more than Nesby's claims of innocence, and he did
2 not disregard those claims. He had Dispatch double check the status of the warrant (SSUF
3 No. 14, 16, 17); he ran her name in his computer a second time and again compared the
4 identifying information (SSUF No. 35); and he followed the arrest wagon to the jail to inform
5 jail staff of what Nesby had told him to ensure that her identity would be confirmed. (SSUF
6 34.) As stated above and in Defendants' objections to Nesby's evidence, Nesby has offered
7 no evidence to the contrary.

8 Hence, *Baker* applies, because Officer Anderson had probable cause to arrest
9 Nesby under the facially valid warrant and took reasonable steps to make sure that her
10 claims of innocence were investigated. Her claims were investigated and she was released.
11 Thus, Nesby suffered no constitutional violation, and Defendants are entitled to judgment in
12 their favor as a matter of law.

13 **Nesby's Mistaken Arrest Was Valid Under the Fourth Amendment.**

14 Nesby argues that even if the warrant was valid, Officer Anderson still violated her
15 Fourth Amendment rights because he did not have sufficient information that Plaintiff was
16 the person identified as Stancy Nesby. (Oppn. at 16:26-27; 17:14-15.) Nesby relies on the
17 distinguishable case of *Simons v. Marin County*, 682 F.Supp. 1463 (N.D.Cal.1987), that a
18 higher level of particularity was required for the warrant, including height, weight, social
19 security number, CII number. (Oppn. at 17:7-16.) In *Simons*, however, the court only
20 concluded that more particularity was required when there was an issue as to whether the
21 officer reasonably believed that Nesby was the person sought in the warrant. *Simons* at
22 1471. In *Simons* the officers served a warrant on a person with the same first and last
23 names as the suspect, but a different middle name. No date of birth, race or sex was on the
24 warrant in *Simons*.

25 The court in the *Simons* case noted that the arrest of a person other than the actual
26 subject sought is valid under the Fourth Amendment if (1) the police have probable cause
27 to arrest the person and (2) the arresting officers reasonably believe the arrestee to be the
28 person sought. *Id.* at 1471, citing *Hill v. California*, 401 U.S. 797 (1971).

1 Here, it is undisputed that Nesby had felony no-bail warrants in her name and that
2 she informed the officer of that fact. Thus, there was probable cause to arrest her based on
3 those warrants. Unlike the situation in *Simons*, nothing about the name in the warrant in
4 this case was inconsistent with Nesby's. Further, in *Simons*, the officers relied on nothing
5 more than "superficial congruence of names" whereas here, Officer Anderson had the
6 correct name as well as other identifying information such as the same birth date, race and
7 gender. In addition, the officers in *Simons* did nothing more than run the name "Fred M.
8 Simons" through the Department of Motor Vehicles computer. And the court noted that "the
9 name is too common and the computer is unable to distinguish by a more accurate name
10 or a birth date." *Id.* at 1472. Whereas here, Officer Anderson ran Nesby's unique name and
11 date of birth through the computer. (SSUF No. 12.)

12 Nesby contends that more information could have been obtained by Officer
13 Anderson with a reasonable investigation through Dispatch or law enforcement databases
14 accessible to him in his patrol vehicle. But Nesby cites no legal authority that would require
15 such an investigation in the field. In fact, Officer Anderson did conduct an investigation of
16 the warrant through Dispatch and requested that the information received be confirmed
17 directly with San Francisco. No further investigation by Officer Anderson was required.
18 Officers in the field do not violate the Constitution by relying on process and orders
19 apparently valid on their face (*Whirl v. Kern*, 407 F.2d 781, 790 (5th Cir. 1968) or by relying
20 on information received through "official channels." See *U.S. v. Hensley*, 469 U.S. 221
21 (1985).

22 Therefore, Officer Anderson went beyond what was required of him and reasonably
23 believed that Plaintiff was the "Stancy Nesby" sought in the warrant based on the match of
24 Nesby's unique name, her birth date, gender and race and by her admission that she had
25 warrants in her name. At the very least, as Officer Anderson concluded, (SSUF No. 19) the
26 information he had justified taking her to the jail, where her fingerprints could be compared
27 and her identity confirmed.
28

Nesby's Claim That Her Detention Did Not Comport with State Law Fails to State a Claim for Relief Under Section 1983.

In order to assert a violation cognizable under section 1983, Nesby must show that Fourth Amendment constitutional standards have been violated. The fact that state law regarding the requirements for arrest may have been violated does not suffice as a basis for a section 1983 action. *Pyles v. Raisor*, 60 F.3d 1211 (6th Cir. 1995). To the extent that Nesby's claims rest on her contention that any aspect of state law was violated (Oppn at 13:1-24), Defendants are entitled to summary judgment in their favor accordingly.

Nesby Has Failed to Establish a *Monell* Claim Against the City.

The "policies or customs" of the City upon which Nesby bases her §1983 claims are that the City does not have a policy articulating the particularity requirement for warrants (Oppn. at 7:13-14); Oakland police officers do not receive adequate training about the particularity of description requirements on warrants (Oppn. at 8:10-22)⁴; and the Oakland Police Department has a custom or practice of inaction and indifference in complying with its internal policy requiring that subjects may not be detained for more than four hours pending confirmation of a warrant. (Oppn. at 8:23-25.) None of these assertions are supported by fact or law. Furthermore, Nesby has not offered any evidence that the Oakland Police Department's training and policies fall below standard police practices anywhere in the United States.

Nesby's allegations that Defendants violated their own internal policy cannot form the basis of a §1983 claim. Although inadequacy of training may serve as the basis for municipal liability under certain circumstances, the evidence presented by Nesby does not support such a claim. Nesby has offered no evidence to contradict the undisputed facts demonstrating that Officer Anderson's arrest of Nesby pursuant to the facially valid warrant was reasonable under the Fourth Amendment. Whatever Anderson's training may have been, Nesby could not have been injured by it one way or the other. Anderson's training

⁴ This claim is particularly odd because Nesby's own expert witness testifies that he received his only training on warrants from OPD. (Llamas Decl., Exhibit D at 127:24-128:7.)

1 would only be relevant if Nesby had demonstrated that her constitutional rights were
2 violated as a result of Anderson's lack of understanding of the Automated Warrant System,
3 the NCIC system or Penal Code Section 850(b).

4 Nesby has failed to show a constitutional injury at all, let alone one that was the
5 result of Anderson's lack of training. In fact, Nesby offers absolutely no evidence of
6 Anderson's training. Her general evidence of current training practices is vague as to time,
7 irrelevant and lacking in foundation as to what knowledge Anderson obtained regarding
8 AWS, NCIC and Penal Code section 850 over his 17 years of service as a police officer. In
9 fact, Nesby has offered no evidence regarding Anderson's knowledge of electronic warrant
10 systems nor how any deficiencies in his knowledge caused her alleged constitutional
11 violation. Without more, Nesby's argument that had the police department properly trained
12 its employees in the enforcement of warrants, she would not have been arrested is wholly
13 without merit and cannot form the basis of a *Monell* claim against the City in this case.

14 Nesby has failed to establish a nexus between the alleged lack of training of officers
15 in general and Anderson's reliance on the communication from Dispatch which confirmed
16 the active status of Nesby's warrant with the issuing county. Anderson was entitled to rely
17 on that information regardless of his training or lack thereof. An officer may arrest someone
18 solely or partly based on information received from official police communications, such as
19 information from Dispatch. See *U.S. v. Hensley*, 469 U.S. 221, 232 (1985); see also *U.S. v.*
20 *Bernard*, 623 F.2d 551, 560-61 (9th Cir. 1979) (probable cause for arrest can be based on
21 "collective knowledge" of law enforcement officers).

22 Moreover, the requisite policy, custom or usage may not be proved through a single
23 unconstitutional incident unless "proof of the incident includes proof that it was caused by
24 an existing unconstitutional policy." *Rogan v. City of Los Angeles*, 668 F.Supp. 1384, 1395
25 quoting *City of Oklahoma City v. Tuttle*, 471 U.S. 808 (1985). In contrast, it is sufficient to
26 show a pattern of similar incidents in which citizens were injured or endangered by
27 intentional or negligent police misconduct or that serious incompetence or misbehavior was
28 general or widespread throughout the police force. *Id.*

1 Nesby has made no showing of custom or usage in this case. She references this
2 single incident and offers no proof that the alleged constitutional violation occurred as a
3 result of inadequate training of officers in general. Therefore, Nesby has failed to show a
4 material issue of fact in dispute relative to her *Monell* claim against the city.

5 **Anderson is Entitled to Qualified Immunity.**

6 Nesby relies on *Simons*, fully distinguished above, for her contention that Anderson
7 is not entitled to qualified immunity. Although Nesby is correct that in *Simons*, the court
8 found that the law was clearly established that an officer must have reasonable probability
9 to believe that the person served is the person named in the warrant in order for the arrest
10 to pass Fourth Amendment muster, unlike the plaintiff in *Simons*, Nesby fails to raise triable
11 issues as to whether Anderson reasonably believed that Nesby was the person named in
12 the warrant.

13 In *Simons*, the court noted that there were triable issues because none of the
14 officers checked for any information about the man they were serving, and they looked only
15 for information about the suspect named in the warrant. After they obtained some
16 information which tended to rebut their assumption that plaintiff was the suspect, they did
17 nothing further, even though other investigation was possible. *Simons* at 1475.

18 Here, Officer Anderson obtained Nesby's license and ran a warrant check based on
19 her name and date of birth. He then determined that other identifying information in the
20 warrant such as birth date, race and gender matched Nesby's description. He had Dispatch
21 run a warrant check and then had them confirm the warrant with the issuing county. He
22 then went to the jail after she was arrested and informed the jail staff about Nesby's claims
23 of identity theft. Jail staff followed up on her claim of innocence and confirmed that she
24 indeed was not the person sought in the warrant and released her. These are facts that
25 Nesby has failed to dispute. As such, the reasoning in *Simons* is unavailing to Nesby here.

26 In determining whether Officer Anderson is entitled to qualified immunity we must
27 answer two questions: (1) was the law governing the officer's conduct clearly established?
28

1 (2) under that law, could a reasonable officer believe that his conduct was lawful? *Case v.*
2 *Kitsap County Sheriff's Dept.*, 249 F.3d 921, 926 (9th Cir. 2001) (citations omitted).

3 With respect to the arrest and detention, Nesby had no clearly established right to be
4 free from detention pursuant to a facially valid warrant. As stated above, the warrant in this
5 case contained everything required in Penal Code Section 850 and more than is required
6 under the Fourth Amendment particularity requirement. Even conceding that Nesby's
7 constitutional rights under the Fourth Amendment are clearly established, under the second
8 prong of the analysis, Officer Anderson is entitled to qualified immunity because a
9 reasonable officer could believe that his conduct did not violate Nesby's constitutional
10 rights.

11 In *Case v Kitsap*, the court addressed the question whether a reasonable officer
12 could believe that Case's arrest on an Oregon warrant was lawful. 249 F.3d at 926. The
13 court noted that "it is well established that, in an action for unlawful arrest pursuant to a
14 facially valid warrant, a police officer is entitle to qualified immunity unless "no officer of
15 reasonable competence would have requested the warrant." *Id.*, citing *Malley v. Briggs*, 475
16 U.S. 335, 345-46 & n. 9 (1986); accord *Barlow v. Ground*, 943 F.2d 1132, 1139 (9th Cir.
17 1991) ("A police officer generally has qualified immunity for conducting an unconstitutional
18 search if he is acting on the basis of a facially valid warrant."); *Mills v. Graves*, 930 F.2d
19 729, 731 (9th Cir. 1991) (noting that "immunity will be lost only where the warrant
20 application is so lacking in indicia of probable cause as to render official belief in its
21 existence unreasonable").

22 Here, it is undisputed that the warrant was facially valid. Nesby's arguments to the
23 contrary are unavailing. To the extent Nesby argues that Officer Anderson or other city staff
24 violated state law or an internal departmental policy, that is not the proper focus for a
25 qualified immunity analysis. Indeed, violation of a police departmental regulation is
26 insufficient for liability under section 1983. *Kitsap* at 928 (citations omitted). Any state
27
28

1 violation of its own policy is irrelevant to the question of whether state officials are entitled
2 to qualified immunity. *Id.* citing *Backlund v. Barnhart*, 778 F.2d 1386 (9th Cir. 1985).⁵

3 Thus, the issue is whether a reasonable officer would have known that his conduct
4 violated Nesby's federal statutory or constitutional rights rather than merely a state law or
5 policy provision. *Id.* citing *Davis v. Scherer*, 468 U.S. 183, 194 & n. 12 (1984). Here, a
6 reasonable officer with a facially valid warrant, the detainee's admission that there are
7 felony no-bail warrants in her name, matching descriptions between the warrant and the
8 detainee including a full unique name, date of birth, race, and sex, would reasonably
9 believe that taking her to jail pursuant to the warrant did not violate her constitutional rights.
10 With respect to her protests of innocence and identity theft, a reasonable officer could have
11 believed it did not violate Nesby's constitutional rights to do what Officer Anderson did –
12 take her to jail where her fingerprints could be compared with to those on file in San
13 Francisco for the person being sought in the warrant and make sure that jail staff was made
14 aware of her claims of innocence.

15 A reasonable officer under the same circumstances could have believed that nothing
16 more was required of him under the law. Therefore, Officer Anderson is entitled to qualified
17 immunity.

18 **Nesby's Detention Was Not Unduly Prolonged.**

19
20 Citing *Florida v. Royer*, 460 U.S. 491, 560 (1983), Nesby asserts that a detention
21 may continue only for so long as necessary and must be conducted in the least intrusive
22 manner. The entire basis for her assertion that her detention was unduly prolonged is that
23 Officer Anderson failed to follow through on an alleged promise to have her fingerprints
24 compared with those maintained by San Francisco, so that she could be cleared and
25 released. It is not clear how, even if true, such a vague allegation would rise to the level of
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28 ⁵ In *Backlund* at 1390, the court dismissed plaintiffs' §1983 claim because they "failed
to show a violation of any constitutional right," despite violation of internal policy). Thus, to the
extent that any of plaintiff's §1983 claims are based on Defendants' violation of their own
internal policies, Defendants argue they should be similarly dismissed.

1 a constitutional violation. It is undisputed that after Nesby was taken to jail, her fingerprints
2 were compared with those maintained by San Francisco and that she was released after it
3 was determined that her fingerprints and photo did not match those of the person wanted in
4 the warrant (who had stolen Nesby's identity). (SSUF No. 38, 39.) Whether or not Anderson
5 was responsible for having the confirmation done or not is irrelevant. The issue is whether
6 the length of Nesby's detention under the circumstances amounts to a constitutional
7 violation. It does not.

8 It is undisputed that Officer Anderson released Nesby to the custody of the arrest
9 wagon (SSUF No. 33) and followed her to jail. He related to the intake officer what Nesby
10 had told him. (SSUF No. 34.) Nesby's allegation that Anderson told her that he would
11 ensure that her fingerprints were compared and failed to do so does not contradict this fact.
12 Nor does her allegation (based on double hearsay) that Officer Anderson did not know
13 what happened to her after she was transported to jail. (Plaintiff's response to SSUF No.
14 34.) Thus, Fact Numbers 33 and 34 remain undisputed.

15 Nesby's argument that jail staff failed to comply with the city's policy that a subject
16 not be detained for more than four hours pending confirmation of a warrant is equally
17 unavailing. The internal standards set by the police department do not confer federal
18 constitutional rights on detainees. Only the Federal Constitution or laws can be the
19 underlying basis for a section 1983 claim. See *Maine v. Thiboutot*, 448 U.S. 1 (1980).

20 Even if the violation of an internal policy could create a constitutional violation,
21 Nesby has presented no evidence of a practice of deliberate indifference to the
22 constitutional rights of those being detained while warrants are being confirmed. The city's
23 internal policy clearly sets a higher standard than is required under the Constitution.
24 Therefore, Nesby cannot establish liability against the city under a prolonged detention
25 theory.
26

27 **Defendants' Objections to Nesby's Evidence**

28 Defendants ask the Court to strike the Declaration in Support of Plaintiff's Opposition
to Defendants' Motion for Summary Judgment and all evidence offered by John "Toby"

1 Saucer and preclude Nesby from using it at trial, on the basis that Rule 26, Federal Rules
2 of Civil Procedure, mandates that this evidence be stricken due to Nesby's procedural
3 violations. Her counsel timely disclosed this witness but gave defense counsel no address
4 (Nesby claims she gave the location at 41st and Market, including that it was "across the
5 street from California Linens", and a telephone number for Mr. Saucer which proved to be
6 incorrect).

7 On November 15, more than three months after the close of discovery on July 28,
8 Ms. Nesby went to Saucer's home and left him a message, He contacted her counsel and
9 agreed to be interviewed November 28 2006. Consequently, although Nesby used
10 Saucer's testimony extensively in her opposition to Defendants' summary judgment motion,
11 Defendants never had an opportunity to depose him.

12 Saucer is the Plaintiff's most significant witness in this case, next to Nesby herself,
13 since he was in the car with her when she was arrested. Defendants object that his
14 testimony "miraculously" corroborates Nesby's, in places where there was formerly no other
15 corroboration. As a result his testimony is extremely prejudicial to Defendants. Nesby cites
16 him 26 times in Plaintiff's Response to Defendants' Statement of Material Facts and 42
17 times in her Opposition Memorandum.

18 Nesby's counsel contends that he did the best he could to inform him of Saucer's
19 whereabouts and that defense counsel did not follow up and remind him to obtain more
20 accurate contact information for Saucer. There is really no excuse, and it is tempting to
21 speculate that this witness was kept under wraps because he may not withstand close
22 scrutiny and Nesby really needs him to corroborate her claim for excessive force against
23 Anderson, which will be the only issue at trial. Nesby must show substantial justification or
24 lack of prejudice in order to oppose the motion to exclude this evidence. *NutraSweet Co. v.*
25 *X-L Engineering, Co.*, 227 F.3d 776, 785-786 (7th Cir. 2000); *Saudi v. Valmet-Appleton,*
26 *Inc.*, 219 F.R.D. 128, 132 (E.D. Wis. 2003).
27
28

Nesby's Objections to Defendants' Evidence

Nesby objects to such words as "verification" as vague and ambiguous with reference to the warrant, to "active" with reference to the warrant, and to "effectively closed down" as referring to the jail during a change of shift. The Court finds that these words and phrases may be interpreted according to their plain dictionary meaning and are not vague and ambiguous.

Nesby also objects on the basis of lack of personal knowledge by Anthony Wynne to whether "City Jail staff worked with the Alameda County Sheriff's Office" to determine whether Nesby was the proper subject of the warrant. She objects as well to whether Anderson had personal knowledge that Stancy Nesby "is a pretty unique name." She also objects that this is improper opinion testimony. Both declarants are qualified to testify to matters within their personal experience without being qualified as experts.

Nesby objects to Defendants' Request for Judicial Notice of Court Documents on relevance grounds and as a discovery violation, since some of the documents were not disclosed to Nesby as required by FRCP Rule 26, specifically Exhibits B, C, D and E (respectively, the bench warrant #576880, 579116, the minutes of a San Francisco Superior Court proceeding, printed on April 30, 2002, describing Stancy Nesby as a fugitive, and a second set of minutes, with a different MC#, both showing that fingerprints were taken of the person in court.

Nesby objects that Defendants did not disclose that they were going to rely on these documents. It is not credible that Nesby could be ambushed by Defendants' reliance on the court documents that led directly to her arrest, or contend that she has been ambushed or in any way prejudiced by Defendants' using these documents.

Conclusion re Evidence

Defendants ask the Court to exclude the evidence contained in the declarations of John "Toby" Saucer, who was in the car with Nesby at the time of her arrest and is the only corroboration for many of her allegations. The Court at this time need not rule on

1 Defendants' motion, because Saucer's evidence is relevant for the most part only to
2 Nesby's claim of excessive force against Anderson, which is not before the Court at this
3 time. The Court may either exclude this evidence at trial. In the meantime discovery is
4 reopened for the limited purpose of allowing Defendants to take Saucer's deposition.


5 Nesby asks the Court to exclude evidence from several declarations on grounds of
6 hearsay and vagueness. The Court finds that the terms to which Nesby objects, for
7 example "verification" as applied to the warrant, can be construed using their dictionary
8 definitions and that the declarants testified according to personal knowledge of procedures.
9 Therefore their declarations are neither hearsay nor impermissible opinions. The Court also
10 declines to exclude documents in Defendants' Request for Judicial Notice, since Nesby
11 cannot claim surprise or prejudice from Defendants' reliance on the warrants which are
12 central to this case.

13 **Conclusion re Defendant's Motion for Summary Judgment**

14 For the reasons stated above, Defendant's Motion for Summary Judgment is
15 granted in its entirety. While the circumstance underlying this case were indeed
16 unfortunate, Plaintiff fails to establish a genuine issue of material fact in dispute sufficient to
17 take these Defendants to trial on these claims.

18 IT IS SO ORDERED.

19 DATED: March 19, 2007

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23 James Larson
Chief Magistrate Judge

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